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C O N F I D E N T I A L SECTION 01 OF 06 SHANGHAI 000321

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USDOC FOR ITA DAS KASOFF, MAC/OCEA - SZYMANSKI

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TAGS: PREL PGOV ECON EINV CH AS

SUBJECT: (C) AUSTRALIAN CONSUL GENERAL'S BRIEFING ON THE RIO TINTO DETENTIONS IN SHANGHAI

REF: A. A) CANBERRA 631
 B. B) BEIJING 1966
 C. C) BEIJING 592
 D. D) CANBERRA 537
 E. E) 08 SHANGHAI 477
 F. F) SHANGHAI P/E - INR/B E-MAIL, FEBRUARY 18, 2009

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CLASSIFIED BY: Christopher Beede, Deputy Principal Officer, U.S. Consulate General, Shanghai, Department of State.

REASON: 1.4 (b)

11. (C) Summary. Australian diplomats in Shanghai have not passed judgment on whether the detention of four Rio Tinto employees here (refs A-B) is retaliation for the failed Chinalco acquisition of Rio Tinto (refs C-D) or for reasons relating to an impasse in iron ore contract negotiations. The Shanghai Bureau of State Security (SBSS) is involved in the case, and has closely complied with bilateral consular agreement requirements relating to notification and access to the detained Australian citizen, Stern Hu, among the four detainees, and with respect to having search warrants and receipting those documents and equipment they have removed from Rio Tinto's and Mr. Hu's premises. The four Rio Tinto employees have not yet been formally charged, and may be held as long as thirty-seven days without formal charges and without legal representation. The investigation focuses on "illegally obtaining state secrets," which SBSS officials have pointedly informed the Australian Consul General is not the same as "espionage." Housed in a regular detention center in Shanghai's Pudong District, Hu has been warned not to discuss the specifics of his case with anyone, including other detainees and his visitors (such as Australian consular officials). Television news broadcasts at the prison have not been shown in the detention center since Hu's arrival on the evening of July 5, but whether that relates to the specifics of his case or detention officials not wanting detainees to know about the riots in Xinjiang is an open question, according to the Australian Consul General in Shanghai. Several U.S. businesspersons in Shanghai have expressed concern about the Rio Tinto case and the vague definition and potentially broad applicability of Chinese state secrets laws, but one downplayed any Chinese focus on Rio Tinto per se, arguing instead that the foreign company has been caught up in the first steps by the Central Government to clean up a notoriously corrupt and largely state-owned steel industry. End summary.

¶2. (C) Australian Consul General in Shanghai Tom Connor provided an hour-long briefing about Rio Tinto case developments to DPO on July 16 in his Consulate's secure conference room. Commerce Secretary Locke's scheduled arrival that evening in Shanghai and the issue having been discussed by Secretary Locke in a television interview in Beijing earlier in the week were reasons cited for acceding to our request for a briefing. Connor prefaced his detailed day by day account by noting the case had already become a political issue in Australia, negating Chinese exhortations to not politicize the case; that the case remained extremely sensitive; and that the outcome of a such a case involving the Ministry of State Security and its Shanghai Bureau of State Security is impossible to predict. The sensitivity of the case is such that the Consulate General was under instruction to brief rarely and usually at the head of post level.

Search Warrants Executed, Four Rio Employees Detained

¶3. (C) On Sunday, July 5, the Australian Consulate General in Shanghai received two telephone calls in quick succession at about six p.m. informing them that Australian citizen Stern Hu of Rio Tinto's Shanghai office had been detained by officers of the Shanghai Bureau of State Security, one from a Rio Tinto colleague and one from the Department of Foreign Affairs and Trade in Canberra, which had been called by Rio Tinto, which had received calls from Hu's family. The Australian Consulate General's understanding is that earlier on July 5, officers of the SBSS had contacted a Rio Tinto employee responsible for liaison with the building management at the commercial building in which Rio has office space and compelled that employee - and his office keys -- to come to Rio's building. There, SBSS also produced a building management staff person and provided a duly executed search warrant and had the Rio and building manager staff persons open Rio's office. The SBSS personnel who entered Rio's premises only searched for offices within the suite, just those of the four employees taken into custody that day. SBSS

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personnel removed documents, computer disks, USBs and laptops before concluding their search, leaving behind a signed receipt of the items they removed. At the same time as the office search, SBSS officers took Stern Hu into custody at his Shanghai house, and again executed a search warrant, removing documents from Hu's residence. Hu and the SBSS departed Hu's residence in the late afternoon. Three other Rio employees in Shanghai, all Chinese citizens, were also detained by the SBSS on July 5. Hu, born in China, became a naturalized Australian citizen in the mid-1990s, Connor explained. The Consulate contacted the Shanghai Municipal Government Foreign Affairs Office (FAO; contact point in case of arrests of foreign citizens) where the FAO duty officer said FAO knew nothing of Hu's case. The Consulate General requested access to the Australian citizen.

¶4. (C) On Monday, July 6, the Australian Consulate again contacted the FAO to request consular access to Hu, and again the FAO replied that that office knew nothing about Hu's detention. The Australians reminded the FAO that in accordance with the terms of the bilateral consular agreement, notification of an arrest must be made within three working days and access to the detainee must be allowed within two days of the notification. The Australian Embassy was making simultaneous approaches to the Ministry of Foreign Affairs in Beijing. As information began to be available to confirm Hu's detention, a message was passed that the SBSS noted that the first working day of Hu's detention was Monday, July 6, not Sunday, July 5. With the Australian Trade Minister scheduled to be in Shanghai from Friday evening, July 10 until 3 pm on Saturday, July 11, the Australian Consulate General in Shanghai requested highest level local meetings for the Minister to raise concerns about the case and to urge transparency and quick resolution of any formal accusations. The Trade Minister had previously twice met current Shanghai Party Secretary Yu Zhengsheng, and that was the Consulate's first request, with Mayor Han Zheng as the requested alternate. (As Party Secretary, Yu is the more powerful of the two officials.)

A Visit to the Consulate by the SBSS

¶15. (C) At midday on Wednesday, July 8, two SBSS officers came to the Australian Consulate General (on the twenty-second floor of an office building on a posh stretch of Shanghai's Nanjing West Road) and presented a third-person note formally informing the Consulate General of the detention of Australian citizen Stern Hu on suspicion of illegally acquiring state secrets. At this meeting, the SBSS officers explained that illegally acquiring state secrets is not the same offense as espionage, a word that had appeared in several media reports by this time. The SBSS also provided the Consulate with an SBSS telephone number. The Australians asked the SBSS officers about how to arrange consular access to the detained citizen, should they just telephone the SBSS? After a pause, the SBSS officers replied that a third-party note addressed to the SBSS should be submitted through the municipal FAO. The Australians highlighted to their visitors that consular access is required and urged a speedy resolution to the matter, points repeated shortly thereafter in a note through the FAO. The SBSS officers departed.

Consular Access Granted, Though TV News Is Verboten

¶16. (C) By early afternoon on Thursday, July 9, the Consulate General had received notification that consular access to Hu would be permitted at 10 am on Friday, July 10 at a detention center in Shanghai's Pudong District. The Consul General would escort one of his consular officers to the meeting. Meanwhile, difficulties with arranging a highest-level local meeting for the imminent visit of the Trade Minister were coming to a head. The FAO informed the Australians that neither the Party Secretary nor the Mayor would be available to meet the Trade Minister on the Saturday of his brief visit to Shanghai.

¶17. (C) CG Connor and one of his consular officers reported to the detention center as agreed at 10 am on Friday, July 10, to visit Stern Hu. The appointment did not begin until nearly 11 am, however, because another Australian resident in the detention center for whom consular access had been arranged prior to Hu's detention was brought to the meeting room first, and only at about 1020 am. This other Australian citizen confirmed that Stern Hu was among their midst, Hu appeared to be well, and informed his diplomats that all residents had been

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warned not to discuss the particulars of Hu's case with him, though they may speak with him about other matters. This other Australian citizen also noted that television newscasts at this detention center have been blacked out since the evening that Hu joined their midst, Sunday, July 5. CG Connor said too little information is available to judge whether the news blackouts in this detention center have anything to do with Hu's sensitive case, suggesting that coverage of the rioting and deaths in Xinjiang that began on July 5 could be another reason for blocking news broadcasts in the detention center.

¶18. (C) Hu, whom CG Connor said he was already reasonably well acquainted with, appeared to be and said he was in good health, with no outstanding medical or dietary issues. Two detention center officials were present for the consular access meeting with Hu, as was customary practice in the Australians' experience, and they appeared to be of the low to middle level ranks as in the past, nothing unusual about them. However, they were joined by a third official, an interpreter, whom CG Connor described as clearly being an SBSS member. This interpreter had informed the CG and his consular officer prior to the start of their interview with Hu that they were not permitted to discuss the details of Hu's case. Hu told his CG and consular officer that he, too, had been informed not to discuss his case. Hu said he was kept in a regular cell, able to participate in exercise sessions and had access to reading materials. The diplomats presented Hu with a list of lawyers. Hu said his application two days earlier for legal representation has been rejected. (The SBSS has confirmed this earlier request and

rejection to the Australian Consulate General, noting that the case is still in an investigatory phase during which legal representation need not be granted.) Hu said he did not well understand the legal system and when he might obtain legal counsel. The Australian consular officer explained that the investigatory phase of a case may last up to thirty days, during which the detainee is not entitled to legal representation, and the detaining authority may request an extension of another seven days, only after which must a formal charge be brought and the accused have a right to legal representation. The interpreter nodded his head to affirm this explanation as the consular officer delivered this explanation.

¶9. (C) The detention center officials confirmed that the Consulate General would have usual consular access to Hu, every month on about the same date of the month. So the next consular visit to Hu should occur on or about August 10.

¶10. (C) Continuing efforts on Friday, July 10 to secure a highest level local meeting for the Trade Minister went for naught. The FAO instead offered an appointment for the Trade Minister with Shanghai Commission of Commerce (SCOFCOM) Director Sha Hailin. Sha and SCOFCOM were actually the Minister's local hosts for the Minister's visit. (Bio note: Sha has held government and party positions in Shanghai, as well as working on Congressional affairs at the Chinese Embassy in Washington early this decade. From Washington he went to Dublin as Chinese Ambassador to Ireland. Back in Shanghai, he also concurrently is a Deputy Secretary-General of the Municipal Government. More on Sha Hailin in refs E and F. End bio note.) After the Mayor and a Vice Mayor, Sha is the third-highest ranking municipal official with explicit responsibilities for foreign trade issues, CG Connor noted. Connor also noted that FAO Deputy Director General Fan Yufei and his colleagues seemed more quickly to recognize the political sensitivities of the Rio case than the staffers at SCOFCOM prepping Sha. Connor briefed his Minister upon arrival Friday night about the offered Sha appointment, which the Minister accepted. Politicization of the case in Australia by the opposition made it necessary to raise the Rio detentions while in Shanghai.

¶11. (C) Connor described his Minister's July 11 meeting with SCOFCOM Commissioner Sha as a good one, with the Minister stressing (1) need to deal with the case quickly, establish family access in addition to the just-granted consular access, and allow for legal representation on behalf of Stern Hu as soon as possible, and (2) politicization of the case back in Australia required expeditious attention to resolving the case. Sha said he understood the Minister's points, that Hu's case would be handled in accordance with Chinese law, and that he would ensure that the Minister's comments were passed to senior leaders in Shanghai and Beijing. Subsequent to the meeting, Connor continued, an Australian journalist heard that Sha ranks

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sixteenth overall in the Shanghai Municipal Government hierarchy, and published an unhelpful article saying the Minister had only been able to meet with a "junior official" to raise the case of the detained Australian citizen. Connor has since explained to the to inquirers that Sha is the third-ranking trade official in Shanghai and furthermore was the official Shanghai host for the Minister's visit, so the Minister agreed to meet with Sha to raise Hu's detention. Connor commented that Australian officials have no knowledge of any broader message intended by China by the stated unavailability of Party Secretary Yu and Mayor Han to meet the Minister; it might really have been a Saturday scheduling difficulty. Australian Prime Minister Rudd also had raised concerns about Hu's detention in a pull-aside meeting with Chinese Vice Foreign Minister He Yafei on the margins of the G-8 meeting in Italy, Connor added. Shanghai FAO and SCOFCOM officials both say that Sha passed a report of his meeting with the Trade Minister to higher officials, with SCOFCOM officials telling the Australian Consulate General that decisions about Hu's case are now a Beijing matter.

Why Rio Tinto and Why Stern Hu?

¶12. (C) CG Connor expressed puzzlement about what level of the Chinese Government had directed State Security to pursue a case against Rio Tinto. He dismissed reports claiming President Hu Jintao had personally approved moving forward with the case. Connor said there is now way to ascertain whether Rio's legal woes are an intended payback for Chinalco's failed bid to acquire Rio. He noted that Australia's Foreign Investment Board would have had to approve Chinalco's acquisition and uncertainties about how the Board would have decided because Chinalco is a state-owned enterprise and Rio a key asset in the Australian economy. Connor noted that Rio had taken on a considerable amount of debt in fighting off a takeover attempt by BHP, and when commodity prices crashed, Rio needed a white knight to provide financing. Chinalco stepped forward as the only company with sufficient cash on hand. However, the Australian investment review and approval process in this case had already exceeded six months, during which commodity prices and the Rio share price had recovered sufficiently such that Rio no longer needed Chinalco's money, so the transaction was called off by Rio before the investment review process reached a conclusion. Even if Rio's problems are not a Chinese payback for Chinalco's failed bid, that failed transaction would have given no reason for delay for anyone in the chain of approvals for launching the investigation of Rio Tinto.

¶13. (C) Connor noted many press reports linking Rio's and Stern Hu's troubles to the 2009 iron ore negotiations. All reports showed that China's steel industry and iron ore suppliers had been nowhere near agreement, when word arrived that the Japanese steel industry had accepted a 33 percent price cut when China wanted an even larger price reduction. CISA, the China Iron and Steel Association trade group, participates in the iron ore negotiations alongside the Chinese steel companies, but Connor said the steel company representatives (specifically naming China's largest steel company, Shanghai-based Baosteel, as an example) say - when the CISA officials are outside of the negotiating room - that they will continue to do business as usual with iron ore suppliers. CISA lacks a reason for its existence without the annual iron ore price negotiations, Connor asserted, noting that iron ore is the only commodity subject to this annual, worldwide negotiation.

¶14. (C) The Chinese Foreign Ministry spokesman late in the week of July 13 made reference to the iron ore negotiations, Connor said, with the MFA referencing information provided by the SBSS. The Australian Consulate General contacted the SBSS to request a copy of the information provided to the MFA. The SBSS replied that the MFA was responsible for how that Ministry construed the information provided by the SBSS, and in any event, the information could not be shared with the Australian Consulate General because it was a state secret. Connor said this exchange should be a warning to everyone about China's wide and non-transparent definition of a state secret. He found it disturbing that the Chinese press is publishing allegations with some details that are not being made available to the interested parties (Australian Embassy and Consulate General and Rio Tinto). Connor predicted that the Rio Tinto case will pose big problems for China to be seen by foreign traders and foreign investors as a predictable and transparent business destination.

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¶15. (C) Connor stressed that the selection of Stern Hu as one of the investigation targets at Rio was significant, in that Hu is a native of China, and thus investigatory bodies may believe he is more vulnerable to pressure. Connor noted that Rio's Managing Director in Shanghai is a naturalized American citizen, but the MSS/SBSS did not choose him as its target, and the United States is not a major supplier of iron ore to China in any event. Connor defended Hu's conduct, noting that commercial negotiators around the world need to gather information about the opposite side's needs, hopes, and expectations, and ability to pay, so that possibilities for agreement can be identified. Surely every company involved in natural resources supply to

China must likewise have information that China could deem to be "state secrets" if their business staff have worked hard. Rio, like other Australian companies and even the Australian Government, does provide, transparently, expenses paid trips to Chinese steel industry executives to visit Australian mines and ports, as they do for Chinese Government officials and as do their competitors in other parts of the world. Connor wondered what specific practice, other than doing his job of learning about the other side, would be the basis of a formal charge against Stern Hu. Probably only in China could the normal conduct of business operations and business negotiations put one at peril of a criminal charge relating to state secrets. Connor further observed that while all businesses in China must conduct themselves in accordance with Chinese law, China is a global power and a global trader and should reconcile its business practices and business regulations to the ways that business is conducted worldwide. Iron ore is a basic commodity, not missiles, chemical weapons or advanced munitions. Commercial secrets do not usually or necessarily constitute state secrets. China has to explain how a criminal charge relating to iron ore (if that is the basis of the case) is somehow related to the state, Connor said.

¶16. (C) So, as of July 16, Australian officials were delivering public messages about maintaining the consular aspects of the case in accordance with the applicable bilateral agreement, urging quick resolution of the case, allowing for legal representation at the earliest date and urging that family visits to Hu be allowed. Privately, Connor continued, Australian officials are telling Chinese officials that the case is already a political issue at home that has the potential to seriously disrupt the bilateral relationship, and that the case will present problems for China because the case will adversely impact the international business community's perceptions of China. As of July 16, Australia and China were not yet at a stage of proposing solutions to Rio's case. With the Ministry of State Security involved, China may be painting itself into a corner. Connor said some Chinese press items have already described Stern Hu and his fellow Rio detainees as guilty of crimes when none of them has even been formally charged with any particular offense.

U.S. Business Views in Shanghai

¶17. (C) A number of U.S. businesspersons in Shanghai commented to Consulate officers about the Rio Tinto case during the week of July 13. Several Governors of the American Chamber of Commerce in Shanghai were likeminded in comments on July 14 that the Rio Tinto case will harm China's prospects as a trading partner and destination for investment because China does not well define what is a state secret and appears to be able and willing to define a state secret after the fact or after the act. They wondered whether state-owned enterprises operate on a level playing field with other enterprises, domestic or foreign, if their interests in negotiations have the additional leverage of state secrets protection and possible prosecution of their partners. A U.S. executive (head of China operations) for a large U.S. manufacturer (and AmCham Shanghai member) had a different point of view when speaking before the AmCham's July 17 breakfast meeting with Commerce Secretary Locke: he believes that Rio Tinto is caught up in a Central Government attempt to clean up the notoriously corrupt Chinese steel industry, the largest players of which are predominantly state-owned. Irrational business practices (importing far too much ore and coke to then re-sell on the spot market at higher prices to smaller, private mills) and collusion with local officials has long been known to the Central Government, he averred. Rio is the entrie point for attacking industry-wide problems, and in his view, Rio's involvement is not intended as payback for

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perceived slights (Chinalco) or to pressure Australia in the iron ore negotiations. Corruption is the target, not lowering the ore price, in his view.

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